

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KEITH ANDERSON, and
CARLOS COOPER,

Plaintiffs,

No. 2:19-cv-01149-GJF-KRS

v.

CITY OF LAS CRUCES, *et al.*,

Defendants.

**ORDER GRANTING MOTION TO STAY AND
STAYING PROCEEDINGS**

THIS MATTER comes before the Court on Defendants' motion to stay proceedings under the Servicemembers Civil Relief Act, 50 U.S.C. §§ 3901-4043. (Doc. 21). Defendants explain that Defendant Christopher Nevarez, a member of the National Guard, is presently deployed outside of the country. A stay of proceedings against Nevarez under the Act for a period of ninety days after he is released from active duty, Defendants maintain, is mandatory. For the other Defendants, however, a concomitant stay is discretionary. In any event, once a servicemember Defendant is entitled to a stay, the case may proceed against non-servicemembers only with approval of the Court. *See* 50 U.S.C. § 3935. Defendants urge the Court to stay the entire matter against them and argue Nevarez is integral to the case, his absence would be prejudicial to a codefendant's assertion of qualified immunity, and allowing the case to progress would result in redundant and piecemeal proceedings.

Although being afforded an opportunity to respond within fourteen days, Plaintiff did not file an opposition to the requested stay. Under the Local Rules, this failure amounts to consent to grant the motion. *See* D.N.M.LR-Civ. 7.1(b). Thus, the relief here is unopposed. Nonetheless, the Court has reviewed Defendants' submissions along with the applicable law and

agrees that not only is Nevarez entitled to a stay, but a discretionary stay of the entire matter is warranted.

IT IS, THEREFORE, ORDERED that Defendants' motion to stay (Doc. 21) is **GRANTED**. This case is stayed during the pendency of Nevarez's deployment and for the ninety-day period following his release from active duty.

IT IS FURTHER ORDERED that Defendants shall alter the Court with then ninety-day period has expired by filing a motion to lift stay.

A handwritten signature in dark ink, reading "Kevin Sweazea". The signature is written in a cursive, flowing style. The first name "Kevin" is written in a smaller, more compact script, while "Sweazea" is written in a larger, more expansive script with a long, sweeping tail on the final letter.

KEVIN R. SWEAZEA
UNITED STATES MAGISTRATE JUDGE